



## **STAFF REPORT**

### **SAUSALITO CITY COUNCIL**

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#### **AGENDA TITLE:**

Adopt resolution determining that James D. Robertson is incapacitated within the meaning of the Public Employees' Retirement Law as a result of performance of his duties for the City of Sausalito

#### **RECOMMENDED MOTION:**

Adopt resolution determining that James D. Robertson is incapacitated within the meaning of the Public Employees' Retirement Law as a result of performance of his duties for the City of Sausalito

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#### **SUMMARY**

James D. Robertson, Fire Lieutenant, has incurred injuries during the course of performance of his work duties for the City of Sausalito and as a result filed a workers' compensation claim resulting from an on-duty injury on November 7, 2004. Due to the ongoing problems resulting from the injury and the ultimate medical evaluation of his physical status resulting from the injury, Lt. Robertson has filed an industrial disability application with the California Public Employees' Retirement System (CalPERS). Staff has accepted the validity of this industrial disability retirement claim and brings to Council a draft resolution containing the findings required by CalPERS in order for the retirement application to be processed.

#### **BACKGROUND**

Due to the nature of the injuries and resulting physical condition caused by Lt. Robertson's industrial accident, the workers' compensation "Agreed Upon Medical Examiner" (AME) has declared that Lt. Robertson is unable to perform the basic duties of his job as Fire Lieutenant. Additionally, Lt. Robertson's personal physician has made the same determination regarding his inability to perform the duties of his job.

As a result of these determinations, Lt. Robertson initiated an industrial disability retirement application with the California Public Employees' Retirement System (CalPERS) sometime in April 2008. To complete the requirements of the retirement process, CalPERS requires that the City Council take official action through adoption of a resolution making a variety of findings, including principally that Lt. Robertson is incapacitated within the meaning of the Public Employees' Retirement Law.

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Staff has worked with representatives of Innovative Claims Solutions (ICS), the Third Party Administrator of the City's workers' compensation program, throughout the process of Lt. Robertson's workers' compensation claim handling. Part of that process included having a supervisor in the Fire Department complete a PERS rating form regarding the physical demands of the Fire Lieutenant position and submitting a copy of the job description that outlines the nature of the job duties involved in performance of that position's responsibilities. After review of the medical findings and the outcome of the rating of the physical demands of the job position, staff agrees with the determination that Lt. Robertson will not be able to return to work in the Fire Service and that he qualifies for an industrial disability retirement.

## **ISSUES**

Lt. Robertson's workers' compensation claim has not yet reached the stage of the Council providing settlement authority to finalize the claim, but that does not preclude the authorization of Lt. Robertson's industrial disability retirement.

Authorization of the retirement will allow the fire organization to resolve a permanent staffing solution to the vacancy created by Lt. Robertson's long-term absence from the job as a result of his work injury.

## **FISCAL IMPACT**

Lt. Robertson's retirement from the job position will create some potential savings on regular staffing and overtime costs once the Fire Department finalizes a staffing solution to his departure from the employment roster.

Lt. Robertson's retirement pension will be paid by CalPERS. Both the City of Sausalito and Lt. Robertson himself have contributed to CalPERS throughout the course of the 24+ years of his career with the Sausalito Fire Department. Since Lt. Robertson has used the balance of his accrued leave time, the City will pay a prescribed portion of his salary in accordance with PERS regulations until such time as Lt. Robertson's retirement is finalized; this is essentially an "advance" on his retirement stipend. Once all conditions are met and the retirement is finalized, PERS will reimburse the City for all funds advanced for this purpose.

## **STAFF RECOMMENDATIONS**

Staff recommends that the City Council adopt the resolution determining that James D. Robertson is incapacitated within the meaning of the Public Employees' Retirement Law as a result of performance of his duties for the City of Sausalito.

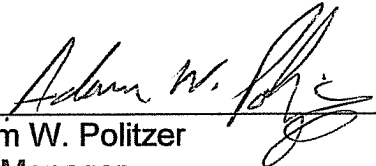
## ATTACHMENTS

Resolution determining that James D. Robertson is incapacitated within the meaning of the Public Employees' Retirement Law as a result of performance of his duties for the City of Sausalito

PREPARED BY:

  
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Dale Vaughn  
Administrative Services Manager

REVIEWED BY:

  
\_\_\_\_\_  
Adam W. Politzer  
City Manager



RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF SAUSALITO, CALIFORNIA  
DETERMINING THAT JAMES D. ROBERTSON IS INCAPACITATED WITHIN  
THE MEANING OF THE PUBLIC EMPLOYEES' RETIREMENT LAW  
AS A RESULT OF PERFORMANCE OF HIS DUTIES FOR THE CITY OF SAUSALITO**

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**WHEREAS**, the City of Sausalito (herein referred to as Agency) is a contracting agency of the Public Employees' Retirement System; and

**WHEREAS**, the Public Employees' Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which he/she is classified as a local safety member is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such Law; and

**WHEREAS**, an application for the industrial disability retirement of James D. Robertson employed by the Agency in the position of Fire Lieutenant has been filed with the Public Employees' Retirement System; and

**WHEREAS**, the City of Sausalito has reviewed the medical and other evidence relevant to such alleged disability.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Sausalito does hereby find and determine that James D. Robertson is incapacitated within the meaning of the Public Employees' Retirement Law for performance of his duties in the position of Fire Lieutenant; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Sausalito does hereby find and determine that such disability is a result of injury arising out of and in the course of employment.

**BE IT FURTHER RESOLVED** that a petition will be filed with the Workers' Compensation Appeals Board for a determination pursuant to Section 21166, Government Code; and a copy of such determination will be provided when rendered.

**BE IT FURTHER RESOLVED** that the member will be separated from his employment in the position of Fire Lieutenant after expiration of his rights under Section 21164, Government Code, effective such date that CalPERS determines that he is qualified for the industrial disability retirement and that no dispute as to the expiration of such leave rights is pending. His last day on regular pay status was May 29, 2008, on which date he used the balance of his accrued leave time.

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Advanced Disability Pension Payments (ADPP) will be made bi-weekly in the amount of \$1,690.80 beginning upon approval of this Resolution, and the ADPP will be paid retroactive to begin following his last day on regular pay status.

**BE IT FURTHER RESOLVED** that the City Council does hereby find and determine that there is not a possibility of third party liability.

**BE IT FURTHER RESOLVED** that the City Council does hereby accept the expert medical reports that the primary disabling condition is due to right shoulder and biceps tendon pain and limitations, as well as cervical spine pain and limitations.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Sausalito on the 10<sup>th</sup> day of June, 2008, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

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Mayor of the City of Sausalito

ATTEST:

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Deputy City Clerk

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